**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**APPELLATE SIDE**

**WRIT PETITION NO. 5217 OF 1994**

SHRI SANWARMAL KEJRIWAL )
residing at C/o H. K. Sharma's )
flat No. 25, 4th floor, 'C' Road
Churchgate Reclamation, )
Bombay 400 020. ) .. PETITIONER
(Org. Defendant)

VERSUS

HARI KUMAR SHARMA alias H.K. )
Sharma RAS (Retd.)(Ex-Settlement
Office, Udaipur) r/o Vishwa )
Mahal, Flat No. 25, 4th floor )
'C' Road, Churchgate Reclamation
Bombay 400 020 )
Temporarily residing at C/o )
Shri Ajit Singh (Raj.) Mehta )
House, 44 Shri Rampura Colony, )
Civil Lines, Jaipur, Rajasthan ) .. RESPONDENT
(Org. Plaintiff)

Mr. Dani h/f A.K. Abhyankar for petitioner

Mr. P.K. Dhakephalkar for respondent

CORAM:-SMT. RANJANA DESAI, J.

DATED:- _____OCTOBER, 2005

ORAL JUDGMENT:

. The petitioner is original defendant in R.A.E. Suit No. 755/2609 of 1983. The respondent is the original plaintiff in that suit. For the sake of convenience it would be better to refer to the parties as per their status in the suit.

2. The plaintiff filed the instant suit for recovery of possession of the premises i.e. Flat No. 25 situated on 4thfloor of Vishwa Mahal, Plot No. 51, Churchgate Reclamation, Bombay 400 020 ("the suit premises" for short) on the ground that the plaintiff requires the suit premises reasonably and bonafide for his residential purpose and for his family members. The suit was filed under Section 13(1)(g) of the Bombay Rents, Hotel and Lodging Housing Rates Control Act, 1947 ("Rent Act" for short).

3. The plaintiff’s case will have to be shortly

stated. The plaintiff was working as re-settlement officer before his retirement in Rajasthan. He retired in March,1983. The defendant is the monthly tenant of the suit premises on monthly rent of Rs.450/-. According to the plaintiff he gave notice dated 3rd May, 1979 demanding the possession of the suit premises from the defendant. The plaintiff terminated the tenancy of the defendant by notice dated 24th May, 1979. The plaintiff replied the said notice by raising false contentions. The plaintiff made a lot of correspondence with the defendant explaining his difficulties and requesting him to vacate the suit premises. However, the defendant did not handover the possession of the suit premises. According to the plaintiff, the defendant is liable to handover vacant and peaceful possession of the suit premises to the plaintiff and his family members as they have no other residential premises save and except the suit premises and the suit premises are reasonably and bonafide required by the plaintiff for residential purpose.

4. According to the plaintiff, the defendant filed R.A. Interpleader Suit No. 1509/80 against the plaintiff and his brother Shri Ambika Prasad

Sharma. The said suit was filed by the defendant to harass the plaintiff and members of his family. As the defendant did not vacate the suit premises the plaintiff was forced to take premises on rent. The plaintiff had to pay monthly compensation of Rs.575/-. The plaintiff contended that the premises which he has hired for temporary accommodation are unsuitable. The plaintiff could not keep his parents with him in such premises. The plaintiff's further case was that being a law graduate, he wanted to practice in Bombay. It was also the case of the plaintiff that considering the status and social standing of the plaintiff and the members of his family it is necessary for the plaintiff to have a spacious accommodation. Because the defendant has not vacated the suit premises the plaintiff is compelled to reside in rental premises which do not befit his status. According to the plaintiff the defendant's sons are living with the defendant in the suit premises. The defendant can afford to shift to another accommodation but the plaintiff cannot afford to do so. The suit premises are situated near the railway station. All facilities are available. It is his earnest desire to keep his parents with him because the suit premises have adequate facilities.

The plaintiff's wife is not keeping good health. The plaintiff's wife's relatives know several doctors and Vaidyas. These contacts will help the plaintiff. According to the plaintiff his eldest daughter has died leaving behind her three minor children. The plaintiff wants to keep the said grand children with him. That can be possible only if the suit premises are made available to him. According to the plaintiff he will suffer greater hardship if the decree of possession is refused.

5. The defendant filed his written statements. According to the defendant the plaintiff has no desire to come to Bombay with his family members for the purpose of occupying the suit premises. The plaintiff has always been residing in Rajasthan and in Bihar. He never resided in Bombay. The contention that the plaintiff desires to come to reside in Bombay is false. According to the defendant, the plaintiff and members of his family have got large property in Rajasthan. The plaintiff and his family members can reside in the accommodation which is available in Rajasthan. The defendant contended that the plaintiff's need is not bonafide and, therefore, the plaintiff's suit is liable to be dismissed.

6. The plaintiff and the defendant led their evidence. The plaintiff examined himself. The defendant examined himself and one more witness. Upon perusal of the evidence the trial court came to a conclusion that the plaintiff had failed to prove that the suit premises are required reasonably and bonafide by the plaintiff. The trial court further held that greater hardship would be caused to the defendant in the event of decree being passed than that would be caused to the plaintiff in the event of its refusal.

7. The trial court has delivered a lengthy judgment running into 148 pages. It is true that higher courts, particularly this court must maintain the dignity of the courts under its jurisdiction and desist from unnecessarily passing caustic comments on them. But in this case I deem it my duty to express my disapproval of the trial courts approach though it may appear harsh. The trial court’s judgment is marred by prolixity. Normally one would not comment on the number of pages of a judgment if it is well written. But the judgment of the trial court is repetitious and rambling. According to me it is also legally

unsound. It is true that the trial court cannot be taken to task for taking a particular legal view. However, the trial court could have avoided prolixity. The learned judge could have easily condensed what he wanted to say in a much shorter and to the point judgment.

8. I will have to give the gist of the trial court's judgment to indicate how rightly the lower appellate court has set it aside though while doing that I may run the risk of making this judgment prolix. The reasoning of the trial court can be summarised as follows:

9. The plaintiff's need and requirement is not bonafide because though the defendant's advocate had given notice to the plaintiff for production of documents the plaintiff failed to produce documents in connection with his properties at Rajasthan and Bihar and the only explanation offered by the plaintiff is that he was not called upon to produce the said documents. Therefore, adverse inference needs to be drawn against the plaintiff. Plot No. D-51 at Hanuman Nagar was allotted to the plaintiff's wife by Jaipur Development Authority. Since she has no source of income, though the plot

stands in her name, it belongs to the plaintiff. There is a big bungalow constructed on the said plot of land. It is the plaintiff's case that the said plot was sold by his wife to his daughter Sunita Chaturvedi. However, no sale deed is produced by the plaintiff in support of this contention. The plaintiff's claim that house constructed on Plot No. 846 at Muzaffarpur which belongs to him is sold is also not substantiated by producing any documents. The said claim cannot be accepted because the tax assessment register indicates that the suit property was gifted to the plaintiff by Smt. Kejariwal and it still stands in the name of the plaintiff. The said house is available for the plaintiff and he can reside there. The plaintiff has ancestral property at Churu in Rajasthan. The plaintiff has contended that it was partitioned but the plaintiff has failed to produce the partition deed. Therefore, the plaintiff has share in the said joint family property at Churu. In view of the availability of these properties the plaintiff's claim that no other property is available to him must be rejected.

10. So far as the bonafide requirement of the

plaintiff is concerned, the trial court has observed that the plaintiff's father is dead, therefore, that requirement does not survive. It has come in the evidence that the plaintiff's mother was happily residing with his brother. While the plaintiff was in Rajasthan his mother never stayed with him and, therefore, the case that he requires the suit premises for his mother is not truthful. The suit premises are not situated on the ground floor. The plaintiff's wife is obese and, therefore, she cannot climb the staircase to look after the plaintiff's mother. Therefore, the bungalow on plot No. D-51 Hanuman Nagar, Jaipur which has rooms on the ground floor would serve the plaintiff's purpose. Good medical facilities are available in Jaipur city. Some of the relations of the plaintiff are also in the medical profession and hence on that ground the plaintiff cannot insist on staying in Bombay. The married daughters of the plaintiff are residing in Rajasthan and, therefore, it is better that the plaintiff stays in Rajasthan. The children of the deceased daughter of the plaintiff are looked after by their father at Navalgadh in Rajasthan. Therefore, that requirement does not survive. The plaintiffs case that he wants to reside in the suit premises

because he is accustomed to bigger premises and because he has status in the society must also be rejected because house on Plot No. D-51 Hanuman Nagar, Rajasthan can be considered suitable for that purpose. Besides since the plaintiff owns premises situated on plot No. 846 at Muzaffarpur, it cannot be said that his status in the society was lowered because he had to stay in rented premises. The plaintiff and his entire family is residing in Rajasthan. He has never stayed in Bombay. He is a retired person. Therefore, it is difficult to believe that the plaintiff wants to reside in Bombay. The plaintiff has all along been staying in rented premises. His desire to stay in the suit premises at the end of his life cannot be considered as a hard reality. The plaintiff's desire to practice law in Bombay is also not genuine. The court has to consider his age. It is not his case that there is longevity in his family. A retired person cannot practice with the same force as a young advocate. Since he has relatives in Jaipur, they can help him in Jaipur, if he practices in Jaipur. If the plaintiff's other properties are considered it cannot be said that the plaintiff will suffer hardship. It is true that financially the defendant is better of. The

defendant did not attempt to find any other accommodation. Even then because other accommodation is available to the plaintiff in Rajasthan the defendant will suffer greater hardship. Moreover, the plaintiff could not establish why he wants to come to Bombay. Since the plaintiff's requirement is not reasonable and bonafide the question of comparative hardship does not arise. The trial court relied heavily on the photographs of the plaintiff's property at Jaipur clicked by defendant 2 and dismissed the plaintiff's suit.

11. Being aggrieved by this judgment of the trial court, the plaintiff preferred an appeal in the Small Causes Court at Bombay being Appeal No. 187 of 1991. The lower appellate court by its judgment and order dated 18/10/84 rightly allowed the appeal and directed the defendant to handover vacant possession of the suit premises and hence this writ petition.

12. Mr. Dani tried to support the trial court's judgment with all persuasive skill at his command. He contended that the plaintiff has not made out any case of reasonable and bonafide requirement qua

the suit premises. He submitted that the plaintiff never disclosed other properties which he owns and which he could have conveniently occupied. The plaintiff never stated why he wants to occupy the suit premises when other premises were available in Rajasthan and Bihar.

13. Mr. Dani contended that to make out a case under Section 13(1)(g) of the Rent Act, actual need must be stated in the pleadings. Though the plaint was amended subsequent developments were not pleaded. Mr. Dani contended that in a suit under Section 13(1)(g) of the Rent Act, the requirement of proof is higher. The plaintiff ought to have produced best evidence. Despite notice the plaintiff never produced evidence in respect of the properties situated at Rajasthan which were available for his occupation. It is the defendant who in his written statement as well as in his evidence pointed out that the plaintiff is not the resident of Bombay and he has properties in Rajasthan but this was not stated in the plaint. The plaintiff did not disclose this in his examination-in-chief. The plaintiff is thus guilty of suppression of evidence and the trial court has rightly drawn adverse inference against the

plaintiff. The plaintiff produced the sale deed of the property at Muzaffarpur at the fag end at the appellate stage. The trial court had not taken it into consideration. The appellate court could have taken it on record only if proper procedure was followed by the plaintiff. In this connection the learned counsel relied upon Om Prakash Gupta v. Ranbir B. Goyal (2002) 2 S C C 256, and Shrirang Dharamraj Kale v. Najmunissa @ Rahimbee Shaikh A. Rahiman Saheb & Ors, 2003(3) All M.R. 51. Mr. Dani further contended that the lower appellate court's finding that all the properties are not relevant is not correct. He submitted that the plaintiff's requirement is not genuine but its a mere fancy. Mr. Dani also submitted that in any event it was obligatory on the part of the lower appellate court to find out the requirement of both the parties and balance it by a decree of partial eviction. In this connection he relied on the judgment of the Supreme Court in Rahman Jeo Wangnoo v. Ram Chand & Ors., A.I.R. 1978 S.C. 413 and a judgment of this court in Gaur Chandra Basu & Anr. v. Ruchira Ashok Sonde & Anr., 2003(1) B.C.R. 438.

14. Mr. Dhakephalkar on the other hand submitted

that the judgment of the trial court is perverse and has been rightly set aside by the lower appellate court. He submitted that the trial court erred in holding that the plaintiff is guilty of suppression. It was not necessary for the plaintiff to give details of the properties at Rajasthan and Bihar. The suit premises are in Bombay. The plaintiff wants to settle down in Bombay. There is nothing unreasonable about the plaintiff's desire to settle down in his house at Bombay. His property at Rajasthan is not relevant for this purpose. In this connection he relied on Sarla Ahuja v. United India Insurance Co. Ltd., A.I.R. 1999 S.C. 100. According to Mr. Dhakephalkar, the trial court has lightly brushed aside the case of the plaintiff that he wants to practice law in Bombay and that he wants to stay in Bombay because Bombay has better medical facilities. He submitted that the landlord is the best judge of his requirement. So far as the argument based on Shrirang Kale's case (supra) that subsequent events can be considered only if pleadings are amended is concerned Mr. Dhakephalkar contended that in the facts of this case since property at Rajasthan and Bihar is not relevant no amendment of pleading was required. He

submitted that the judgment of the Supreme Court in Om Prakash's case cannot be applied to this case because the facts of the present case materially differ from the facts in that case. As regards the argument that the court has to balance the interest of parties and pass a partial decree, if the circumstances so demand, Mr. Dhakephalkar contended that the learned Single Judge of this court in Gaur Basu's case (supra) placed reliance on the Supreme Court's judgment in Rahman Wangnoo's case (supra). However, attention of the learned Single Judge was not drawn to the judgment of the Division Bench of this court in Kisanrao Bortakke v. Narayan Shete A.I.R. 1979 BOMBAY 79 where after considering Rahman Wangnoo's case, the Division Bench expressed that there is no statutory obligation on the court to frame a particular issue covering provisions of the second part of sub-sec. 2 of S. 13 of the Rent Act and if from the judgment it is clear that the court has disposed of the case by keeping in mind the said provisions there is no infirmity in the disposal of the dispute. Mr. Dhakephalkar contended that the present case is covered by the judgment of this court in Kisanrao's case. He, therefore, submitted that no interference is necessary with the impugned

judgment.

15. Having perused the evidence and heard the learned counsel for the parties, I am of the opinion that the trial court's judgment is perverse and is rightly set aside by the lower appellate court. The trial court ought not to have assumed advisory jurisdiction. There was no need for the trial court to express that because the plaintiff's daughters are in Jaipur, he should stay in Jaipur and that because he has contacts in Jaipur, he should practice law in Jaipur. I am surprised at the fact that the trial court has commented on the age of the plaintiff and expressed that the plaintiff has not proved the existence of longevity in his family which could have supported his desire to practice law. The trial court has expressed that at the fag end of the plaintiff's life he cannot have desire as to stay in Bombay and practice. This way the trial court has suggested that the plaintiff has not many years to live. One fails to understand how the plaintiff can prove existence of longevity in his family and where is the requirement in law of such proof. It was also not necessary for the trial court to express that because the plaintiff has never stayed in Bombay

his desire to reside in the suit premises is not genuine. It was also not necessary for the trial court to express that because the plaintiff's mother was staying happily with his brother,his desire to keep her with him is not genuine. None can comment in this manner on the son's desire to keep his mother with him. There are many such instances which indicate that the trial court has missed the important aspects of the matter and niggled at unimportant details.

16. In Prativa Devi (Smt.) V. T. V. Krishnan (1996) 5 Supreme Court Cases 353, the landlady made an application for eviction of the tenant on the ground that she was not having any alternative accommodation and she was staying with a family friend since the death of her husband. The Rent Controller allowed her application but the High Court in revision reversed the Rent Controller's order on the ground that the landlady was 70 years old; she had no one to look after her and, therefore, she should continue to stay with the family friend. The Supreme Court disapproved of this approach. The Supreme Court held that the landlord is the best judge of his residential requirement. He has a complete freedom in the

matter. The Supreme Court further observed that it is no concern of the courts to dictate to the landlord how, and in what manner, he should live or to prescribe for him a residential standard of their own. The Supreme Court further observed that there is no law which deprives the landlord of the beneficial enjoyment of his property.

17. The observations of the Supreme Court in Prativa Devi's case are tailor-made for the present case. The trial court ought not to have commented on the plaintiffs advanced age and observed that at this age he cannot practice law. The trial court ought not to have observed that since the plaintiff knows people in Jaipur he should practice law there. The trial court should not have advised him to stay in Jaipur because his daughters and other relatives stay there. Such and other gratuitous advice was uncalled for. The plaintiff has proved his reasonable and bonafide requirement about the suit premises. The plaintiff has no other premises in Bombay. The trial court ought to have decreed the suit.

18. In Meenal Eknath Kshirsagar v. Traders & Agencies & Anr., (1996) 5 S C C 344, the landlady

and her husband did not own any flat in the city except the suit premises. The landlady had not disclosed the fact that her husband was a tenant of a flat in which his brother's family was living. Another flat was in possession of her husband on leave and licence basis. The trial court decreed the suit for possession of the suit premises on the ground of bonafide and reasonable requirement of the landlady. The appellate court and the High Court held that the landlady had failed to prove that she requires the suit premises reasonably because she had not disclosed the availability of other accommodation in the plaint. The Supreme Court set aside the High Court's judgment. The Supreme Court observed that it is for the landlord to decide how and in what manner he should live and he is the best judge of his residential requirement. It was further observed that if the landlord desires to beneficially enjoy his own property when the other property occupied by him as a tenant or on any other basis is either insecure or inconvenient it is not for the courts to dictate to him to continue to occupy such premises. In the present case, therefore, the trial court could not have advised the plaintiff to stay in Jaipur or continue to stay in tenanted premises in Bombay,

when considering the financial condition of the plaintiff and other circumstances the plaintiff could not have done so.

19. In Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta (1999) 6 S C C 222, the Supreme Court has observed that the judge should place himself in the armchair of the landlord and find out whether the need to occupy the suit premises in natural, real, sincere and honest. Once the court is satisfied of the bonafides of the landlord, then in the matter of choosing out of more than one accommodation available to the landlord, his subjective choice shall be respected by the court. The court would permit the landlord to satisfy the proven need by choosing the accommodation which the landlord feels would be most suited for the purpose; the Court would not in such a case thrust its own wisdom upon the choice of the landlord by holding that not one but the other accommodation must be accepted by the landlord to satisfy such need.

20. In the present case the landlord has no other suitable premises in Bombay. His rented accommodation is not convenient and does not befit his status. He is above ninety. He has spent all

his life after retirement trying to get back the suit premises because he wants to stay there. He cannot be asked to stay in Jaipur or asked to stay in rented accommodation in Bombay which is inconvenient.

21. It was strenuously contended by Mr. Dani that the plaintiff suppressed documents in connection with his property in Rajasthan and Bihar and therefore, adverse inference has been rightly drawn against him. His requirement is therefore, not bonafide.

22. In my opinion, this arguement has no substance. Both the courts have held that Onkar Nivas in Sarayganj in Muzaffarpur and Nand Niketan in Islampura does not belong to the plaintiff. House No. 118 on plot No.846 at Muzaffarpur has been sold by the plaintiff by a registered sale deed during the pendency of the suit. It was argued that the plaintiff did not follow the correct procedure to bring the said registered sale deed on record. Mr. Dani took strong exception to it and placed reliance on Om Prakash’s case (supra). In my opinion, Om Prakaksh’s case presents a different factual matrix and is not

applicable to the present case. The reliance placed by Mr. Dani on that judgment is misplaced. However, even in that judgment the Supreme Court reiterated the earlier view taken by it that a fact having fundamental impact on the right of the parties cannot be blinked at and the court may in such cases blend the rules of procedure if no specific provision of law or rule of fair play is violated for it would promote substantial justice provided that there is absence of other disentitling factors or just circumstances. Considered in the light of this observation, I feel that no fault could be found with the lower appellate court for taking the sale deed on record and holding that the said property is not available to the plaintiff. So far as the bungalow at plot No. D-51 at Jaipur is concerned it belongs to the plaintiff's wife and the plaintiff cannot be non-suited on account of that property in a suit under section 13(1)(g) of the Rent Act. But even otherwise the plaintiff's property at Rajasthan or Bihar can have no relevance to his bonafide and reasonable requirement of staying in the suit premises in Bombay. The law is well settled on this point.

23. In Sarla Ahuja's case (supra) the Supreme Court was dealing with a case where a widow wanted to shift her residence from Calcutta to New Delhi to occupy her own building which was in the possession of her tenant. The suit was filed under Section 14(1)(e) of the Delhi Rent Control Act 1958 ("Delhi Act" for short). There the landlord has to prove that he has no other reasonably suitable residential accommodation. The Rent Controller passed a decree of eviction. But the Delhi High Court non-suited the landlady on the ground of the availability of the house in Calcutta. The Supreme Court set aside the High Court's order and restored the Rent Controller's Order holding that to deprive a landlord of the benefit of the ground mentioned in Section 14(1)(e) of the Delhi Act on account of availability of alternative accommodation, it is not enough that such alternative accommodation is in a far different state. Such accommodation must be available in the same city or town, of at least within reasonable proximity thereof, if it is outside the limits of the city. The Supreme Court observed that the requirement that the landlord should have no other reasonably suitable residential accommodation does not mean that if the landlord has another house anywhere in the world he

cannot seek recovery of possession of the suit premises. Possession of flat in Calcutta would not disentitle the landlady from recovering possession of the tenanted premises in Delhi. These observations of the Supreme Court are clearly applicable to this case. Assuming that the plaintiff has any property in Rajasthan or Bihar that will not disentitle him from getting possession of the suit premises situate at Bombay. Therefore, there was no need for him to disclose any property which he owns in Rajasthan or in Bihar. There is no question of drawing any adverse inference against the plaintiff on that count.

24. Mr. Dani then referred to second part of sub-section (2) of Section 13 of the Rent Act. He contended that under sub-section (2) no decree of eviction shall be passed on the ground of reasonable and bonafide requirement of the landlord if the court is satisfied that, having regard to all the circumstances of the case greater hardship would be caused by passing the decree then by refusing to pass it. But under the second part of this sub-section if the court is satisfied that no hardship would be caused either to the tenant or to the landlord by passing the decree in respect of a

part of the premises, the court shall pass the decree in respect of such part only. Therefore, it was statutory obligation on the part of the lower appellate court to consider this aspect and pass a partial decree. He submitted that this is preeminently a fit case where interest of parties could have been balanced by passing a partial decree. The defendant has a large family. The plaintiff does not require the entire suit premises. The lower appellate court, therefore, erred in not considering this aspect of the case. The impugned judgment, therefore, suffers from an infirmity. Mr. Dani submitted in any case, if this court is inclined in favour of the plaintiff it should pass a partial decree at this stage. In this connection the Supreme Court's judgment in Rahman Wangnoo's case and judgment of this court in Gaur Basu's case have been relied upon by him.

25. I am unable to accept this submission of Mr. Dani. In my opinion, none of the judgments cited by Mr. Dani help the defendant. The attention of the learned Single Judge who decided Gaur Basu's case was not drawn to the judgment of Division Bench of this Court in Kisanrao's Bartakke's case (supra) where this court decided the same question.

It appears that there was an apparent conflict between the two judgments of the learned Single Judges of this court with regard to the requirement of framing an issue under the later part of sub-section (2) of Section 13 of the Rent Act. The matter was therefore, referred to a larger Bench. The Division Bench observed as under:

. "There is no statutory obligation to frame a particular issue covering the provisions of the second part of sub-sec. (2) of S. 13 of the Act. On the contrary when the total circumstances of a case are being considered by the Court in the light of the pleadings of the parties and the evidence led, it is enough if the Court is aware that while passing a decree for eviction against a tenant a division of the premises is permissible and under certain circumstances it can bring about a situation where the needs of both the landlord and tenant are satisfied without there being any hardship on either of them. If the court disposes of the case with the awareness of these provisions either by express discussion or by implication where the facts speak for themselves, the Rent Court had done its duty properly and there is no infirmity of any kind either in the procedure or in

the substantive disposal of the dispute".

26. It is pertinent to note that while coming to this conclusion the Division Bench referred to the judgment of the Supreme Court in Rahman Wangnoo's case (supra), on which heavy reliance is placed by Mr. Dani, and observed that the provisions of Section 11(1)(h) of the Jammu & Kashmir Houses and Shops Rent Control Act and the relevant provisions of the Rent Act could not be said to be in parimateria.

27. In Yeshwant Kamble v. Prasad Karanjkar & Ors. 1998(2) B.C.R. 446, a learned Single Judge of this court was considering similar question. He observed that the observations of this court in Kisanrao Bartakke's case do not conflict with the Supreme Court's judgment in Rahman Wangnoo's case and that the Division Bench of this court has merely explained the nature of the duty cast on the court. It was held that the record must disclose that the court was aware of its duty and has considered the same either by express discussion or by implication.

28. In my opinion, it is clear that the lower

appellate court has disposed of the case with the awareness of the provisions of Section 13(2) of the Rent Act, particularly second part thereof. The question of hardship has also been gone into by it and I find its reasoning unassailable.

29. Evidence on record shows that the plaintiff worked with the State of Rajasthan from 1957 to 1983. He was holding the post of Resettlement Officer. In 1967 he purchased the suit premises because he wanted to occupy them after his retirement. In the year 1979 he sent a notice to the defendant stating that he wanted to reside in the suit premises after his retirement in 1983. It appears that just to cause harassment to the plaintiff, the defendant filed Interpleader suit against him and his brother which was dismissed on 21/6/83. Thereafter the plaintiff filed the instant suit on 30/6/83. It is an admitted position that except the suit premises the plaintiff does not have any other premises in Bombay.

30. After vacating the government premises, the plaintiff had to stay in rented premises at Jaipur. He has produced rent receipts to prove this. In

Bombay the plaintiff was staying in rented premises at Andheri and then he shifted to Bhayander where he took premises on leave and licence. The plaintiff's desire to practice law in Bombay cannot be doubted. His desire to keep his mother cannot be called a whim. At present considering his advacned age, his desire to stay in Bombay because of the availability of advanced medical facilities in Bombay cannot be called unreasonable. The landlord has to prove his reasonable and bonafide requirement and not dire necessity. It is important to note that right from his retirement till this day he is trying to get the suit premises for his occupation. He has now crossed ninety years. To me his requirement appears to be not only reasonable and bonafide but a dire necessity. The suit premises are ideally situated for a man of his age. All necessary facilities are available near the suit premises. It is high time he gets possession of the suit premises.

31. Besides both the courts have concurrently held that financially the defendant is better situated than the plaintiff. The lower appellate court has examined the financial condition of the plaintiff and the defendant and has rightly come to a

conclusion that the defendant and his sons are financially very sound. They are in business. They have investments. They have advanced loans to people. They can easily acquire suitable accommodation. Besides both the courts have observed that the defendant has not made any attempts to acquire premises of his own. This conduct disentitles him from pleading hardship. Considering the age of the plaintiff and his financial condition greater hardship would be caused to the plaintiff, if the decree of eviction is refused to him. I concur with the lower appellate court on this aspect also. This is not a case where partial decree could be passed. In view of the above in my opinion, there is no substance in the writ petition and it deserves to be dismissed. The writ petition is, therefore, dismissed.

(SMT. RANJANA DESAI, J.)